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U.S. Patent Application Serial No. 09/755,670

Title: Dynamic Selection of Lowest Latency Path in a Network Switch

Filing Date: 04 January 2001

Attorney Docket No. 233-609-USP

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FROM: Thomas J. Osborne, Jr./Reg. No. 39,786

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial Number..... 09/755,670
 Filing Date..... January 4, 2001
 Inventors..... Stuart Oberman et al.
 Applicant..... McDATA Corporation
 Examiner..... Nguyen, Steven
 Attorney's Docket No. MCD172/233-609-USP
 Title: Dynamic Selection of Lowest Latency Path in a Network Switch

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From: Thomas J. Osborne, Jr. (Tel: 720-377-0759; Fax: 720-377-0777)
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COMMENTS ON STATEMENTS OF REASONS FOR ALLOWANCE

The Applicant acknowledges with appreciation the allowance of claims 1-14, 16, 19-41, 43-44, 47-49 and 51-65 (renumbered as 1-58) in the subject application by the Examiner. The Applicant agrees with the Examiner's Statement of Reasons for Allowance to the extent that claims 1-14, 16, 19-41, 43-44, 47-49 and 51-65 (renumbered as 1-58) are patentable over the references in the record.

However, the Applicant expressly traverses the Examiner's Statement of Reasons for Allowance to the extent that any statement is intended to or has the intended effect of limiting a claim scope, explicitly or implicitly, by not reciting verbatim the respective claim language, or is intended to or has the effect of limiting a claim scope by stating or implying that all the reasons for patentability are in any way fully enumerated. The Applicant specifically does not acquiesce or agree in any manner as to any assertion in Examiner's statements that may be interpreted to narrow the claims to less than their recited scope.

In addition, the statements made in the Examiner's Reasons for Allowance are an attempt to summarize limitations from various claims that do not necessarily reflect actual limitations in each of the claims. As such, the individual limitations in the claims need to be construed as they are found in the claims instead of as summarized in the statements made in the Examiner's Reasons for Allowance. For example, the statements

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indicate that groups of claims provide a limitation of "refraining the input port" where in actuality the claims differ from this limitation. Claim 1 recites "refraining from requesting;" claim 14 recites "wherein the first input port is configured to refrain;" and claim 41 recites that, "the routing means is configured to refrain." Other limitations in these claims as well as limitations found in other claims likewise include variations that differ from the summaries provided in the statements made in the Examiner's Reasons for Allowance.

The Applicant further points out that the reasons for allowance set forth by the Examiner are not the only reasons that the claims are allowable. Further reasons for allowance of the claims beyond those enumerated by the Examiner are described and set forth in the Applicant's specification. In addition, structures and methods that perform substantially the same function in substantially the same way to achieve substantially the same results are included within the scope of the claims.

Finally, as the Examiner's reasons for allowance are not exhaustive, such reasons for allowance do not establish estoppel against Applicant seeking and obtaining allowance of additional, broader claims in a continuation application, which Applicant reserves the right to file.

By virtue of the Examiner's allowance of the claims over the cited references and associated arguments, it is believed that all arguments made by the Examiner have been overcome.

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If there are any questions, please contact the undersigned attorney.

Dated: March 10, 2006.

Respectfully submitted,



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